

By Herbert Dodell

Using the Appraisal Process to Resolve Insurance Disputes

The key to virtually every appraisal is the neutral appraiser or umpire.

Currently every fire insurance policy issued in California requires that certain disputes be submitted to a process known as appraisal if demanded by either party to the policy. Many other types of policies, including earthquake policies, require the use of the appraisal process in certain circumstances. Insurance Code Section 2070 mandates the use of a statutory form for all fire insurance policies in California. Section 2071 contains the form and all the terms of the insurance agreement, including the appraisal process. On October 5, 2001, Governor Gray Davis signed SB 658, a law that is effective for all policies issued or renewed after January 1, 2002.¹ The new legislation amended Section 2071 and codified the appraisal process in certain particulars.²

Insurers and insureds and their counsel should understand the specific procedures that are involved in the appraisal process. The parties must address a variety of issues, including:

- The composition of the

appraisal panel, including the selection of an appraiser by each party and the selection of a neutral appraiser or “umpire” (the standard form fire insurance policy’s term for a third-party or neutral appraiser and a term that appears in other types of insurance policies).

- The bases for objecting to the selection of an appraiser.
- Whether the appraisal will be formal or informal.
- The powers of the appraisers.
- The grounds for attacking an unfavorable appraisal award.

Case law often uses the words “arbitrator” and “appraiser” interchangeably, but there are substantial differences as well as similarities between the terms. Although an appraisal proceeding is a form of arbitration and is governed by the general rules of arbitrations—including Code of Civil Procedure Sections 1280 et seq. and case law—an appraiser has far greater leeway than an arbitrator in evaluating a matter.³

Typically, an insurance policy requires each party to select one appraiser, who is termed a “party” appraiser. Under the old law, which governs all policies issued before January 1, 2002, and not renewed after that date, when the two appraisers are

unable to reach agreement regarding loss and damage, they must jointly select a third person, the neutral appraiser or umpire. The new law eliminates the requirement of a disagreement between the appraisers as a con-

dition to the selection or appointment of a neutral arbitrator.⁴ Under amended Section 2071, party appraisers must select an umpire, and the parties can seek court intervention solely on the basis of the parties’ inability to agree on the selection of an umpire:

[T]he appraisers shall first select a competent and disinterested umpire; and failing for 15 days to agree upon the umpire, then, on request of the insured or [the insurance] company, the umpire shall be selected by a judge of a court of record in the state in which the property covered is located.

The proceedings can be formal or informal, at the option of either of the parties. However, under amended Section 2071, for policies issued or renewed effective January 1, 2002, the proceedings must be informal unless the parties mutually agree to the contrary.⁵ “Informal” means that no formal discovery can be conducted, including depositions, interrogatories, requests for admissions, or other forms of formal civil discovery. A court reporter cannot be used to record the proceedings. The appraisal panel may not consider coverage issues or causation, but the parties can agree to expand the panel’s authority to enable it to make those decisions as well. Expansion of the scope of the appraisal, however, is very risky because a successful appeal from an appraisal award is unlikely, unless a showing of “corruption, fraud, or undue means” or other specified grounds according to

the arbitration statutes are established.⁶

For the most part, an informal appraisal is a free-for-all with the appraisal panel members doing just about anything they want to do. No formal rules of evidence may be applied. The only real benefit of an informal appraisal is the reduced cost and a more speedy resolution of the dispute.

Formal proceedings involve the taking of evidence, including the examination of witnesses, and a record can be made by a court reporter for use in subsequent proceedings, such as a bad faith action. A formal appraisal is akin to a minitrial, with the usual costs and expenses. The benefit of a formal appraisal is that it serves as prelitigation discovery and can provide a written record of proceedings in which the opposing party has offered evidence that may or may not be accepted by the trier of fact.

Practitioners should consider two recent cases, *Fraley v. Allstate*⁷ and *Guebara v. Allstate*,⁸ in deciding whether to use the appraisal process in anticipation of a bad faith case resulting from an insurer’s unwillingness to pay the full value of a claim. The two cases hold that if there is a “genuine dispute,” including reasonable reliance on experts, bad faith is not present as a matter of law. However, the failure to conduct a thorough and timely investigation is not included in the genuine dispute category. Therefore, the use of an appraisal process in which evidence can be developed that reflects delays and a failure to thoroughly investigate can counter an argument that

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there was a genuine dispute and that a claim for bad faith was thereby negated. The reasonableness of the experts also can be tested in a prelitigation setting by probing the relationship between an expert and the insurer as well as the depth and quality of the evaluation.

Selection of the Appraisers

Appraisers are required to be both “competent and disinterested,” words specifically mentioned in Insurance Code Section 2071 and in case law. Most of the cases dealing with the selection process arise from the question of disinterest rather than competence. The reason is simple: An appraiser may be anyone selected by the parties, as long as the appraiser is capable of understanding the proceedings. This would include nonlawyers with special expertise in a particular field.⁹ Even if the appraiser does not hold a contractor’s license, a law degree, or an adjuster’s license, he or she is still likely to be found competent.

The more interesting question occurs when the issue of disinterest is raised. What constitutes sufficient interest to disqualify an appraiser? Cases throughout the United States are all over the map on this issue. In some jurisdictions, the definition is broadly construed, and in others the opposite is true. Interestingly enough, however, an appraiser is universally held to a higher standard of impartiality than an arbitrator, who in turn is held to a higher standard of impartiality than a judge.¹⁰ This is because of the tremendous latitude given to an appraiser in performing his or her function.

Further, even though California’s contractual arbitration statutes may differentiate between a party appraiser and the neutral appraiser selected by the two party appraisers, the courts have held that all must adhere to the same “competent and disinterested” standard.¹¹ In *Gebers v. State Farm General Insurance Company*,¹² the court stated that the duties imposed on appraisers generally, coupled with the insurer’s duty of good faith and fair dealing, required that all appraisers, even the party appraisers, be disinterested.

Despite this lofty language, many insurers have their favorite appraisers who are regularly hired because they can be relied upon to express opinions favorable to the insurers. Opposing parties should make an effort to disqualify these appraisers, even though the reality is that an appraiser will probably remain on the case unless a strong showing can be made of bias in accordance with the standards set forth in case law.¹³

To the extent that a party anticipates filing a bad faith suit in a matter, either because of a lowball offer or other improper conduct, the selection of an appraiser subject to objec-

tion will be yet another example of tortious conduct, even though the appraiser may be able to withstand a challenge. While the admissibility of such conduct is subject to the vagaries of a court ruling, there is nothing to lose by making the challenge. It is imperative that an objection to an appraiser be made at the time of the appraiser’s selection or at the time of the required disclosure of the identity of a party’s appraiser—or the objection may be considered to be waived.¹⁴

While many cling to the ideal that appraisers should be neutral and disinterested, this is unlikely in the real world. The insurer selects a known quantity, someone expected to be partial, and the insured does likewise. It is difficult for some appraisers to be non-biased because they have been selected by a party and are being paid by that party. Since compromises often occur, the strength of the party appraiser’s advocacy is important. Certainly an opposing party does not want an appraiser who is well known as a forceful advocate for the party selecting him or her.

The key to virtually every appraisal is therefore the neutral appraiser or umpire. An award can be rendered by any two appraisers, including a selected party appraiser and the neutral appraiser. Occasionally, the two party appraisers agree, but it is far more common for the selected neutral appraiser to side with one or the other party’s appraiser in rendering an award. Obviously, if the insurer’s selected appraiser and the neutral appraiser agree to an award, the opinion of the insured’s selected appraiser is meaningless. It is also common for the neutral appraiser to pressure one of the appraisers to agree, thereby allowing for the entry of an award. The dynamics vary from case to case. One thing, however, is absolutely certain: Careful attention should be paid to the selection of the neutral appraiser.

If the two appraisers are unable to agree on a neutral appraiser, the parties have the right to petition the court for the appointment of a neutral appraiser. When that happens, both parties face the risk of a neutral appraiser they may not want. For policies issued or renewed after January 1, 2002, the statute and the standard fire insurance policy mandates submission to the state court in which the property is located for appointment of an umpire if the two appraisers cannot agree within 15 days after the effort is first made to select the umpire. Either party may petition the court to make the appointment at the expiration of this 15-day period.

Disinterest and Disclosure

What happens when there is some indication of a relationship between an appraiser or the supposedly neutral appraiser and some-

one else—a party or an attorney—in the proceeding? Cases vary from jurisdiction to jurisdiction regarding the degree and nature of the relationship used to determine whether or not an appraiser is truly disinterested. Some jurisdictions permit a member of the same country club and even a social friend to qualify as an appraiser and do not find this type of relationship to rise to the level of interest. Indeed, the majority of the cases focus on a financial interest in the outcome.

Does an appraiser who has been selected by a party in the past qualify or should that appraiser be disqualified? The leading case on the subject is *Commonwealth Coatings Company v. Continental Casualty Corporation*,¹⁵ a 1968 U.S. Supreme Court case regarding federal law that was adopted into California law in 1970 in *Johnston v. Security Insurance Company*.¹⁶ In *Commonwealth Coatings*, the Supreme Court interpreted the Federal Arbitration Act regarding the issue of disinterest. The Court held that it is sufficient to prove interest when the relationship between the arbitrator and one of the parties is “of such a nature to give clear grounds for suspicion of the proceedings” and “render it unlikely that the proceedings constituted the fair and impartial tribunal to which the other party is entitled.”

Last year, in *Michael v. Aetna Insurance Company*,¹⁷ the California Court of Appeal held that the standard under *Commonwealth Coatings* was identical to that imposed by state law: Appraisers are required to disclose to the parties any reason that might cause a person aware of the facts to reasonably entertain a doubt that the appraiser would be able to be impartial—and the failure to do so constituted evidence of “corruption,” which was sufficient to vacate an award.

Although this standard appears to make sense, its application to a particular set of facts is not always certain. The standard does not give sufficient guidance regarding the nature of the relationship that should be disclosed. “Suspicion” is a fairly nebulous word without a concrete and universal definition. The court was clear on one point: The remedy for this problem is not for appraisers to sever themselves from the marketplace but instead to disclose their relationships. It is the duty of the appraiser to reveal facts that might create the impression of bias; the parties need not engage in discovery on the issue.¹⁸

In determining whether to disqualify an appraiser, it is not necessary to establish actual fraud, bias, or any improper motive on the part of the appraiser. Rather, it is sufficient to establish merely an “impression of possible bias.”¹⁹ Under that standard, the issue is whether a reasonable person would objectively entertain doubts about that appraiser’s

neutrality based upon the appraiser's history and past actions.²⁰

In California, the older cases provided standards for determining whether an appraiser was truly disinterested, but they were not particularly concrete. By the mid-1990s, the arbitration statutes were amended to require detailed disclosure from a neutral arbitrator. Thus, under Code of Civil Procedure Section 1281.9, within 10 days of service of notice of the proposed nomination, the proposed neutral appraiser must disclose all of the following for the preceding five years:

- The names of the parties to all prior or pending cases in which the neutral appraiser is or was acting as a party appraiser or neutral appraiser.
- Any prior attorney-client relationship between the neutral appraiser and any party or attorney involved in the pending appraisal.
- Any professional or significant personal relationship between the neutral appraiser or the neutral appraiser's spouse and any party or attorney for a party.

Generally, if a party wishes to object to the selection of a neutral appraiser because the disclosure raises the impression of possible bias, the objection should be raised at the earliest opportunity; if a party elects to refrain from unveiling their knowledge of bias in order to later attack an unfavorable award, the courts will bend over backwards to find that the right to object was waived by not asserting that right on a timely basis.²¹ The statute does not affect a party's right to seek to vacate an award for "undue means," under Code of Civil Procedure Section 1286.2. Objections based on information appearing on the face of the disclosure statement should be made immediately, but if the disclosure itself is inadequate, all rights should be reserved until after the award.

These objections and disqualification procedures apply only to the neutral appraiser rather than to the party appraisers.²² However, case law standards remain crucial for parties seeking to ensure the disinterest of a party appraiser. A motion to disqualify a selected party appraiser may become necessary if disclosure patently provides a reasonable basis for disqualification, and the party objecting does not want to wait for the outcome of the appraisal to seek relief. The failure of a party appraiser to disclose information that might be relevant to the question of competence and disinterest may provide a basis for attacking an award. Cases involving the disqualification of an appraiser are very fact-intensive, and the waiver cases are extremely tricky; therefore, there is no hard-and-fast rule.

Despite the disclosure requirements, the

outcome of a challenge is based on many unpredictable variables. When there is a request for an adjudication of whether there has been a proper disclosure, if there is a question of interest, or if there is a basis sufficient to rise to the level of the "impression of possible bias" test outlined in *Commonwealth Coatings*, much depends on the interpretation of the circumstances given by a particular judge deciding the issue. The problem is that every case will be viewed differently by the reviewing judicial officer. Therefore, there is no certainty.

A question remains whether the specific disclosure statutes replace or add to the general "impression of possible bias" test set forth in *Commonwealth Coatings*. What would happen if, for example, a neutral appraiser had a twin brother who had a significant personal relationship with the insurer's attorney, and the relationship is not disclosed? If an insurer later argues that an award for the insurer cannot be set aside because the relationship did not have to be disclosed, what is the likely result? There is no case yet on point. It is far better to make a disclosure than to subject an award to later attack for failure to disclose.

Although there is no time period provided by statute regarding the disqualification of a party appraiser, a party seeking to disqualify the neutral appraiser has 15 calendar days to serve a notice of disqualification. Under no circumstances can a notice of disqualification be served after an award has been rendered. The remedy in that instance is an attack on the award itself.

Conduct of the Appraisers

In California, the appraisal process is limited to determining one factual question only: the amount of the loss, or the actual cash value of the insured item. The appraisal panel may not consider anything else. On the other hand, an arbitration can be used to decide any dispute the parties agree to submit.

*Safeco Insurance Company v. Sharma*²³ illustrates the principle. In *Sharma*, the insured claimed theft of a matched set of 36 paintings. The insured and insurer began the appraisal process. The appraisal panel found that the stolen paintings were not a matched set and thus were of lesser value than the insured's claim. The appellate court reversed confirmation of the appraisal award, stating: "In no authority is it suggested that an appraisal panel is empowered to determine whether an insured lost what he claimed to have lost or something different." Thus, although the question decided in *Sharma* obviously affected the value of the paintings, it was held to be beyond the scope of the appraisal. While an insurer is free to litigate questions of the insured's misrepresentations

in a courtroom, the insurer cannot raise those questions in an appraisal setting. Courts may use various terms—such as "amount of loss," "actual cash value," or "total loss"—but they all mean the same thing.

*Unetco Industries v. Homestead Insurance Company*²⁴ also illustrates the limited power of the appraisal panel. In *Unetco*, the earthquake policy in question tied the deductible to the replacement cost. The court held that the insurer was entitled to an appraisal of the actual cash value of an earthquake loss for the purpose of determining the amount of the loss but was not entitled to an appraisal to determine the replacement cost for the purpose of determining the amount of the deductible.

The appraisal process cannot be used to decide coverage issues unless the parties stipulate to empower the appraiser panel to do so. If the insured and insurer are debating whether a fire loss was caused by a covered windstorm or uncovered arson, neither party can demand appraisal of that issue. As a practical matter, this means if the insurer is demanding an appraisal, the insured should understand that the parties are only arguing over dollars and cents; at least there is no coverage battle to fight.²⁵

Appraisers have one power that judges do not. Appraisers are free to make their own independent investigation, while a judge is limited to deciding only the issues that are presented by the parties based on admissible evidence. The appraisal panel must give notice to the parties that it is considering evidence outside the hearing, although such notice rarely occurs. Code of Civil Procedure Section 1282.2(g) provides: "If a neutral arbitrator intends to base an award upon information not obtained at the hearing, he shall disclose the information to all parties to the arbitration and give the parties an opportunity to meet it." In *Sapp v. Barenfeld*,²⁶ the California Supreme Court definitively stated:

Arbitrators may inform themselves further by privately consulting price lists, examining materials, and receiving cost estimates. This procedure may be ex parte, without notice or hearing to the parties. It is entirely proper for arbitrators, in a case requiring it, to obtain from disinterested persons of acknowledged skills such information and advice in reference to technical questions submitted to them, as may be necessary to enable them to come to correct conclusions, provided that the award is the result of their own judgment after obtaining such information.

If an insurer is claiming that, for example, a valuable Persian rug can be replaced with

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a rug of like kind and quality for \$99 at the local swap meet, the appraisers are free to do their own pricing of Persian rugs. It is risky to automatically assume that the appraisers will conduct their own investigation, and if they do, almost anything can be valued on Ebay at garage sale prices. Thus, the insured should produce competent evidence of the proper valuation of expensive Persian rugs.

The court in *Griffith Company v. San Diego College for Women*²⁷ permitted one arbitrator, acting alone, to consult with a disinterested attorney about legal conclusions. Although the case is somewhat obscure, it appears that the consultation was well known to the other party arbitrator and the neutral arbitrator, because the other party arbitrator filed a lengthy declaration in support of a motion to set aside the award. (There is no requirement that all three arbitrators act as a body.)

Although there are no cases addressing the issue of an appraiser who communicates with an interested person, such as a party or the party's attorney, it would seem logical that such an ex parte communication would represent undue means, thereby allowing for the vacating of the award. One big problem for parties is that the deliberations of the appraisers are confidential and not subject to discovery. Therefore, there is little that can be done to monitor the appraisal panel's conduct without conducting ex parte communications with the party's selected appraiser or inquiring of the neutral appraiser, and practitioners' options here are limited. While certain ex parte communications, such as requests for a status report, are proper, anything beyond the request would likely be held improper and may subject an award to attack. Moreover, the neutral appraiser is under no obligation to reply to inquiries from any party unless there is a specific request for a particular action to take place.

Challenges to the Award

After the panel of competent and disinterested appraisers has been selected, has listened to or reviewed the evidence, and has made its own independent investigation, the panel will render an award, which can be confirmed, vacated, or corrected. The parties have 100 days in which to seek to correct or vacate the award and four years to confirm it—a clear indication of the courts' bias toward confirmation.

If the insured suspects improper conduct and bad faith in the appraisal process, the time to respond is while the proceedings are incomplete and before an award is determined. It is far more preferable to deal with the appraisal process before the award is rendered than seek to attack it afterwards. The courts view the latter as akin to sour grapes.

In addition, the courts follow the judicial principle that a proceeding under attack was conducted properly unless there is substantial evidence to the contrary. Overturning an award or obtaining relief during the proceedings are both difficult.

In California, an appraisal award may be confirmed by filing a petition with the superior court. Once confirmed, the award becomes a judgment and can be enforced in the same way as any civil judgment.

An appraisal award can be corrected only if there is an obvious mathematical error. It cannot be corrected to fix an error of fact or law, even if the error is obvious on the face of the document.²⁸

According to Code of Civil Procedure Section 1286.2, an appraisal award can be vacated only if one of the following six grounds is present:

- 1) The award was obtained through corruption, fraud, or undue means.
- 2) There was corruption on the part of any of the appraisers.
- 3) The rights of a party were substantially prejudiced by the misconduct of a neutral appraiser.
- 4) The award exceeded the powers of the appraisers.
- 5) The rights of a party were substantially prejudiced by the refusal of the appraisers to postpone the hearing upon sufficient cause being shown or by the refusal of the appraisers to hear evidence material to the controversy or by other conduct of the appraisers contrary to the provisions of law.
- 6) A neutral appraiser who was subject to disqualification failed, upon receipt of a timely demand, to disqualify himself or herself.

While ground four might sound like fertile ground for attacking appraisal awards, it has been virtually eliminated by the decision in *Moncharsh v. Heily & Blase*.²⁹ In *Moncharsh*, the employee-attorney signed an employment agreement regarding the handling of fee disputes if the attorney left the employer law firm. The agreement had both an arbitration clause and a fee-splitting clause that seemed to violate professional legal ethics. The arbitrator upheld the validity of the fee-splitting arrangement when rendering the award. On appeal, the state supreme court specifically emphasized the need for finality in arbitration agreements, even when a clear error in law exists. The court did not disturb the erroneous award. In short, courts do not want to retry the merits of any arbitrated dispute.

Thus, the most successful attacks on an appraisal award focus on whether the award was obtained through undue means. This ground for attack arises if an appraiser fails to make adequate disclosures or is not disinterested. Undue means also includes ex parte

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communications between a party appraiser or neutral appraiser and one of the parties or attorneys. Attacks based on undue means have met with success if evidence provided to the court shows the failure of the neutral appraiser to grant a continuance for the purpose of the introduction of new evidence.

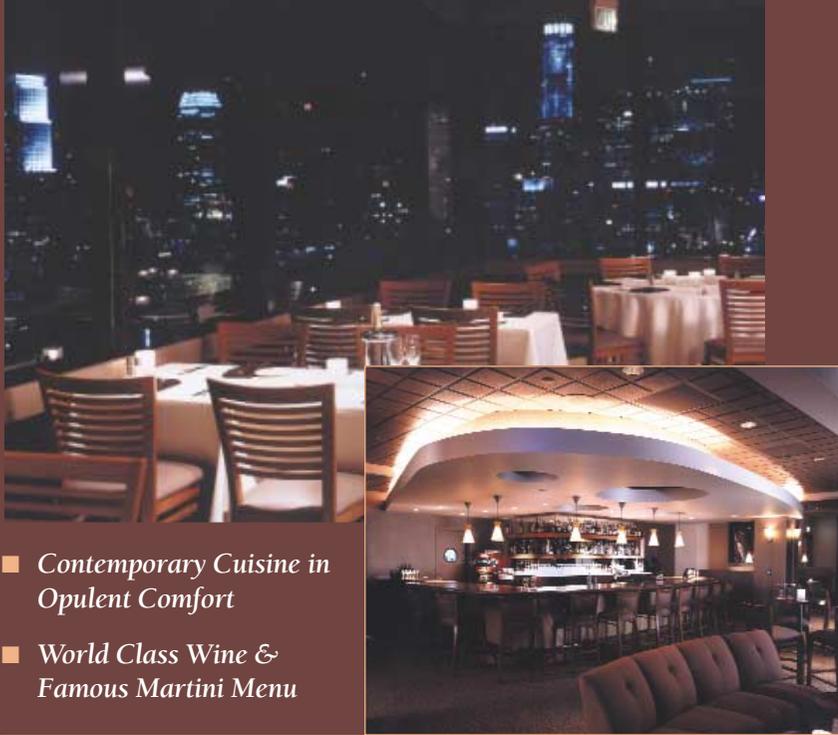
A party seeking to vacate an unfavorable award should carefully examine the adequacy of the disclosure statements. Again, as with other aspects of appraisal disputes, each case, including those involving vacating an award based on undue means, is decided on its facts.

From a practical perspective, almost everything in an appraisal will depend on the motive

of the neutral appraiser. With retired judges, financial considerations should not be ignored. The likelihood that a retired judge will be called upon to serve as a neutral appraiser by an insurer in the future is far greater than the likelihood that the retired judge will be selected again by the insured or the insured's counsel. For that reason alone, a careful evaluation should be made of the proposed neutral appraiser before proceeding. It is unlikely that a party appraiser will be disqualified, and a neutral appraiser selected by the court is generally unknown to the parties. Therefore, uncertainty and unpredictability loom large in any appraisal.

To attack an award via a petition to vacate is difficult. The courts are loath to set aside any award without the clearest of evidence of fraud, corruption, or undue means. Confirmation of an award, however, generally occurs unless the facts are so egregious that the judge ruling on the petition to vacate cannot reconcile the conduct with the award. ■

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¹ SB 658, 2001 Cal. Stat. ch. 583.
² Specifically, the legislation amends INS. CODE §§790.034 and 2071 and adds §§790.031, 2071.1, and 10082.3.
³ Unetco Indus. Exch. v. Homestead Ins. Co., 57 Cal. App. 4th 1459, 67 Cal. Rptr. 2d 784 (1997).
⁴ INS. CODE §2071, as amended. See SB 658, *supra* note 1.
⁵ *Id.*
⁶ CODE CIV. PROC. §1286.2.
⁷ Fraley v. Allstate, 81 Cal. App. 4th 1282 (2000).
⁸ Guebara v. Allstate, 237 F. 3d 992 (9th Cir. 2001).
⁹ Gear v. Webster, 258 Cal. App. 2d 57, 63 (1958) (real estate agents and real estate brokers); Hope v. Superior Court, 122 Cal. App. 3d 147, 150, 154-55 (1981) (members of the New York Stock Exchange).
¹⁰ Figi v. New Hampshire Ins. Co., 108 Cal. App. 3d 772, 166 Cal. Rptr. 774 (1980).
¹¹ Gebers v. State Farm Gen. Ins. Co., 38 Cal. App. 4th 1648 (1995).
¹² *Id.*
¹³ See text, *infra*.
¹⁴ See Louise Gardens v. Truck Ins. Exch., 84 Cal. App. 4th 648 (2000).
¹⁵ Commonwealth Coatings Co. v. Continental Cas. Corp., 393 U.S. 145, 89 S. Ct. 337 (1968).
¹⁶ Johnston v. Security Ins. Co., 6 Cal. App. 3d 839, 841-42 (1970).
¹⁷ Michael v. Aetna Ins. Co., 88 Cal. App. 4th 925 (2001).
¹⁸ Kaiser Found. Hosps., Inc. v. Superior Court, 19 Cal. App. 4th 513, 517 (1993).
¹⁹ Commonwealth Coatings, 393 U.S. 145; Johnston, 6 Cal. App. 3d at 841-42; Ceriale v. AMCO Ins. Co., 48 Cal. App. 4th 500, 505 (1996).
²⁰ Banwait v. Hernandez, 205 Cal. App. 3d 823, 829 (1988).
²¹ Louise Gardens v. Truck Ins. Exch., 84 Cal. App. 4th 648 (2000). In *Louise Gardens*, a dissatisfied insured lost an early attempt to disqualify a party appraiser, did not appeal, went to appraisal, and then filed a petition to confirm the appraisal in order to appeal from the earlier decision regarding disqualification. The court held that these procedural shenanigans amounted to a waiver of the insured's rights to object to the appointment and to vacate the award.
²² See *id.*
²³ Safeco Ins. Co. v. Sharma, 160 Cal. App. 3d 1060, 207 Cal. Rptr. 104 (1984).
²⁴ Unetco Indus. Exch. v. Homestead Ins. Co., 57 Cal. App. 4th 1459, 67 Cal. Rptr. 2d 784 (1997).
²⁵ If an insurer first demands an appraisal and then tries to deny coverage through, for example, an action for declaratory relief, the result would require two proceedings.
²⁶ Sapp v. Barenfeld, 34 Cal. 2d 515, 521, 212 P. 2d 233 (1950).
²⁷ Griffith Co. v. San Diego Coll. for Women, 45 Cal. 2d 501, 506-07 (1955).
²⁸ Moshonov v. Walsh, 22 Cal. 4th 771 (2000) (Even if a contract provides for an award of attorney's fees to the prevailing party, and a party prevails on the contract but the award fails to include attorney's fees, the award cannot be corrected to add the fees.).
²⁹ Moncharsh v. Heily & Blase, 3 Cal. 4th 1 (1992).